



POLICE DEPARTMENT

October 3, 2018

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In the Matter of the Charges and Specifications : Case No.
- against - : 2017-17262
Police Officer Jorge Rochez :
Tax Registry No. 929056 :
Critical Response Command :
-----X-----

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Samuel Yee, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Police Officer Jorge Rochez, while assigned to the Critical Response Command, on or about April 1, 2017, while off duty, in [REDACTED], New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department in that, having engaged in a dispute with Person A, said Police Officer Rochez wrongfully attempted to prevent her from calling for a police response. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Jorge Rochez, while assigned to the Critical Response Command, on or about April 1, 2017, while off duty, in [REDACTED], New York, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Rochez wrongfully engaged in a physical altercation with Person A.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS

3. Said Police Officer Jorge Rochez, while assigned to the Critical Response Command, on or about April 1, 2017, while off duty, in [REDACTED], New York, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Rochez wrongfully damaged property, a cellular telephone, belonging to Person A. (*Dismissed*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 6, 2018.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Francis Perez, Eddie Torres, Georgiana Morgan, and Lieutenant Brian Horan as witnesses. The Department also introduced into evidence the hearsay statements of Person

A. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. After reviewing the evidence, and assessing the credibility of the witnesses, the Court finds Respondent Guilty, and recommends the forfeiture of thirty (30) suspension days already served on pre-trial suspension.

ANALYSIS

This case involves an accusation that Respondent wrongfully engaged in a physical altercation with Person A, on April 1, 2017, and that he also attempted to prevent her from calling for police assistance. Specifically, Person A alleged that during a struggle inside [REDACTED] [REDACTED], Respondent threw her to the ground, struck and kicked her. Respondent acknowledged that there was a struggle, but provided a different account as to the details, stating that he merely restrained Person A from assaulting Person B, and denied punching or kicking her, or interfering with her efforts to call 911.

Person A did not appear to testify at this hearing. Translated transcripts from two statements she made to [REDACTED] Investigations on April 2, 2017 were admitted into evidence (Dept. Exs. 1 and 2), as was a transcript of her 911 call and a recording of the call itself (Dept. Exs. 3 and 3A). The Advocate also submitted a copy of Person A's [REDACTED] [REDACTED] (Dept. Ex. 5). Hearsay evidence is admissible in an administrative tribunal, and a case may be proven with such evidence provided it is found to be sufficiently reliable and probative on the issues to be determined. See *Ayala v. Ward*, 170 A.D.2d 235 (1st Dept. 1991); *In the Matter of 125 Bar Corp. v. State Liquor Authority of the State of New York*, 24 N.Y.2d 174 (1969). To be sure, it is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross-examine, and the court can observe the demeanor of the witness. In the absence of such live testimony from the witness here, this tribunal carefully reviewed Person A's prior statements and 911 call.

In her first statement to police on April 2, Person A stated that [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] The day before the incident, there was a disagreement when

Person A's son was watching television and [REDACTED] changed the channel; Respondent was not present at the time. Person A argued with Person C, Person C insulted her, and so she called 911. According to Person A, after the call, Person C slapped her in the face, and scratched her hand and elbow. Police responded, but nobody was arrested. (Dept. Ex. 1 at 4-5)

Person A stated that the following day, April 1, Respondent came [REDACTED] around 2300 hours. He was upset that Person A had called the police on Person C, and that she had deflated [REDACTED] air mattress. Person A, in turn, was upset that Respondent was taking Person C's side. They argued, and Person A cut up a pair of pants and a suit belonging to Person B, as well as the air mattress. Person B arrived [REDACTED], and Person A was angry because he wasn't telling the truth about what had happened the day before. Person A slapped Person B, Respondent hit Person A, and she slapped Respondent back. According to Person A, Respondent then threw her to the floor and kicked her twice in the stomach. Respondent was holding her down, so Person A tried to bite Respondent, but wasn't sure if she was successful. She tried to call 911, but Respondent took her phone, handed it to Person B, and told him to pour water on it in the sink, which he did. Respondent let Person A stand up, but blocked her from retrieving her phone. Respondent then handed Person A her phone, which she used to call 911, though dispatch had difficulty understanding her because the phone was damaged. Person A stated that as a result of being thrown to the floor, her knees, hips, and arms were hurting, but she did not seek medical attention. (Dept. Ex. 1 at 7-22, 26, 28)

Minutes later on April 2, Person A made a follow-up statement to police. She repeated that she felt pain in her knees, hips, and arms, and added that her wrist hurt as well from where Respondent grabbed her. She also reiterated that Respondent kicked her in the stomach while she was on the floor. (Dept. Ex. 2 at 2, 11)

In her [redacted] (Dept. Ex. 5), Person A stated that when Person B did not tell the truth about what had occurred the day before, she smacked him in the face. Respondent then defended Person B by smacking Person A in her face, and she, in turn, smacked Respondent in his face. Respondent pushed Person A to the floor [redacted], started to kick her, and would not let her up. Respondent took her cell phone, handed it to Person B, and told him to wet it in the sink.

In her 911 call, Person A stated that she was arguing with Respondent when Person B came [redacted]. Person B accused Person A of lying, so she slapped him. Respondent then hit Person A, threw her to the floor, and kicked her. Person B took Person A's phone to the kitchen sink and wet it, but it still was working. (Dept. Ex. 3 at 4) During the call, Person A initially sounds upset, then she calms down until the police arrive, at which point she begins to sound agitated. The operator describes the call as "very muffled," but with the aid of an interpreter Person A is able to communicate the details of what occurred.

Three neighbors from nearby apartments called 911 and testified regarding what they had heard. Francis Perez, whose apartment was separated from [redacted] by an elevator, testified that he heard a female screaming, and banging on the wall. He also heard the sounds of things moving in the apartment. Perez did not hear the female asking for help. When the screaming got louder, he called 911. (Tr. 29-30) Eddie Torres from the apartment directly above [redacted] testified that he heard a loud noise that sounded like something falling to the floor. He also heard a lady and a little boy crying. (Tr. 33) Georgiana Morgan from the apartment directly beneath [redacted] testified that she heard a female screaming, and a lot of rumbling from the apartment. At one point during her 911 call, Morgan stated "Oh, my God," because the screams were getting louder. (Tr. 38-39)

Lieutenant Brian Horan of Counterterrorism Investigations testified that he was assigned this matter in April of 2017. He was not present at the scene, but he later reviewed interviews that had been conducted by [REDACTED] Investigations, and spoke with one of the responding officers, Officer Peralta. According to Lieutenant Horan, the responding officers had described Person A as upset, screaming, and angry. She told them that Respondent had thrown her to the ground, and punched and kicked her. Person A complained she was in pain, but the officers did not observe any visible injuries on her body, and she refused medical attention. Person A admitted to them that she had cut up the air mattress and suit, and that she had attacked Person B. Respondent, meanwhile, had identified himself to the responding officers, and told them that he had been trying to hold down Person A because she had a pair of scissors. Respondent showed the officers a bite mark on his stomach, and he might have complained of an injured toe while he was wearing open-toe sandals. (Tr. 47-52, 55)

Lieutenant Horan also testified that Person B had been interviewed and told investigators that Respondent had never struck Person A. Person B described how he, himself, had been assaulted by Person A, and a [REDACTED] was prepared (Dept. Ex. 4). In that report, Person B stated that Person A had "suddenly punched him on the left side of his face twice calling him a liar." Person B suffered pain to his left jaw and went to Jacobi Hospital for evaluation. Person B and Person A [REDACTED] 52-54)

Respondent testified that earlier on April 1, Person B called to make arrangements to pick up his suit from the apartment; in light of the previous day's dispute with Person A, Person B wanted Respondent present when he went to retrieve the suit. When Respondent arrived at [REDACTED] apartment shortly after 2300 hours, [REDACTED]

Person B was not yet there. Respondent observed that the air mattress had been deflated and asked Person A about it. Person A was loud and very angry as she complained about the events of the previous day. Respondent asked about Person B's suit, and Person A grabbed a pair of scissors, went to the closet, and started cutting up the suit. Respondent told her not to do it, but he did not physically engage her since she was screaming and holding the scissors. Person A also used the scissors to cut up the air mattress. (Tr. 61-65, 81)

When Person B arrived at the apartment, he asked about his suit. Respondent testified that Person A dropped the scissors and lunged at Person B, slapping him on the left side of his face with an open hand, and punching him there with a closed fist as well. Respondent attempted to stop the assault on Person B by placing Person A in a bear hug and pulling her away. Respondent testified that he was concerned that Person A would continue to go after Person B. Person A tried to pull away from Respondent, and during the ensuing struggle they both fell to the floor. (Tr. 66-69, 78, 81-85)

According to Respondent, Person A kicked and flapped her arms trying to get to her feet. She also bit Respondent in the stomach. Respondent insisted he did not strike or kick Person A. He estimated that he held her on the floor approximately five or seven minutes. When Respondent felt Person A had calmed down sufficiently, he released his hold on her. Person A used her phone to call 911, without any interference from Respondent or Person B; neither of them took the phone from her or ran it under water. Respondent added that during the struggle, Person A threw a computer to the floor, and a table was moved and banged against a wall, which may have accounted for some of the sounds heard by the neighbors. (Tr. 68-74, 78, 83-84)

Specification 1 alleges that Respondent attempted to interfere with Person A's efforts to call for police assistance, while Specification 2 charges Respondent with wrongfully engaging in

a physical altercation with Person A. On both counts, the record has established Respondent's guilt by a preponderance of the evidence, and I find Respondent guilty.

Much of what transpired inside the apartment was undisputed. The day before there was an argument involving Person A, Person B, and Person C; Respondent was not present for that dispute. As a result of that incident, Person A was upset with Person B, which carried over to the following day. Person A admitted that she deflated the air mattress, then cut it up with scissors, and used the scissors to cut up Person B's suit as well. When Person B arrived at the apartment, Person A acknowledged that she slapped him because she was angry that he was not telling the truth.

There is a dispute, however, regarding what exactly Respondent did to Person A during the ensuing struggle. Person A claimed that Respondent struck her, threw her to the floor, and kicked her in the stomach, while Respondent emphatically denied it. Person A did not appear to testify, so this tribunal was unable to witness her demeanor, and counsel was deprived of the opportunity to cross examine her about the details of her account.

Nevertheless, Person A's credibility is enhanced by the fact that she promptly and consistently related her account of what occurred to three separate Department units. First, Person A called 911 from the apartment and stated that Respondent had struck her, threw her to the floor, and kicked her. This call was made in real-time, casting doubt on the assertion that her account was embellished. Person A was still upset and screaming when she repeated the same accusation to the responding officers who questioned her inside the apartment. Back at the precinct, Person A provided to investigators the same description of events a third time, as evidenced by the recorded interviews and the [REDACTED]

Through all its tellings, Person A's account remained consistent and logical. To her credit, she also candidly admitted her role in the events preceding the altercation, and that she struck Person B and Respondent during the altercation itself. She even acknowledged that she tried to bite Respondent during the struggle to free herself, though she wasn't sure if she actually bit him.

Additionally, in her interviews with the investigators, Person A was measured in her statements about Respondent. She was adamant that Respondent had never been physically violent with her in the past. Person A also stated that she did not feel threatened by Respondent, and did not want him arrested. Person A came across as someone who was merely reciting the facts of what had just transpired, rather than being motivated by vindictiveness toward Respondent. I credit her version of events, and reject Respondent's self-serving denial.

Even if Person A was the initial aggressor against Person B, Respondent's reaction was excessive under the circumstances. This was not, as Respondent contends, merely a reasonable effort to prevent Person A from attacking Person B. Respondent's actions, as described by Person A, went beyond simple restraint. The credible evidence has established that Respondent wrongfully engaged in a physical altercation with Person A, and I find him guilty of Specification 2.

Similarly, I credit Person A's accusation that Respondent attempted to prevent her from calling 911. She stated that he took her phone and handed it to Person B, instructing Person B to hold the phone under water which he did. Even though Person A was able to call 911 with the phone, the operator described the call as "very muffled," and the sound on the recording is consistent with that description. Moreover, her explanation of how the phone was taken away and held under water was detailed and plausible in the context of what was occurring, and did

not have the feel of a narrative that was fabricated. I credit Person A 's consistent account, reject Respondent's self-serving denial, and find him guilty of Specification 1.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to Police Officer on July 2, 2001. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. In 2015, Respondent forfeited ten (10) vacation days for charges related to his misclassification of a robbery as a petit larceny.

Respondent has been found guilty of both specifications. The Advocate asks that Respondent forfeit thirty (30) suspension days previously served. That request is reasonable. This tribunal is mindful that Respondent was not directly involved in the sequence of events leading up to the incident on April 1. However, even taking into account Person A 's role in initiating the altercation, Respondent's conduct went beyond what was necessary to contain the situation, and there must be some accountability for his actions. In *Disciplinary Case No. 2014-12329* (Sept. 10, 2015), a 10-year police officer with no disciplinary record negotiated a penalty of thirty (30) suspension days already served for a physical altercation with [REDACTED]; during an argument, he shoved her, threw her to the ground, and tried to grab her cell phone to prevent her from calling 911. See, also, *Disciplinary Case No. 2016-15192* (Sept. 13, 2016) (11-year police officer with no disciplinary record negotiated a penalty of thirty (30) suspension days already served for a physical altercation with [REDACTED] [REDACTED] was present; the respondent and [REDACTED] each were arrested, and both cases were dismissed in criminal court).

Taking into account the totality of circumstances and issues in this matter, I recommend that Respondent forfeit the thirty (30) suspension days already served on pre-trial suspension.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED



NOV 09 2018

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JORGE ROCHEZ
TAX REGISTRY NO. 929056
DISCIPLINARY CASE NO. 2017 17262

Respondent was appointed to Police Officer on July 2, 2001.

On his last three annual performance evaluations, Respondent twice received 4.0 overall ratings of "Highly Competent" for 2015 and 2016, and received a 3.5 overall rating of "Highly Competent/Competent" for 2014. He has been awarded one medal for Excellent Police Duty. [REDACTED]

[REDACTED]

[REDACTED]

In 2015, Respondent forfeited ten vacation days after pleading guilty to making incorrect entries in Department records, resulting in a reported robbery being classified as a petit larceny, and failing to refer said reported robbery to the detective squad for further investigation.

In connection with the instant matter, Respondent was suspended from April 2, 2017 to May 1, 2017, and then placed on modified assignment until October 12, 2017. He also was placed on Level II Discipline Monitoring on July 24, 2017. Monitoring remains ongoing.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials